IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/03/2004

CORAM

THE HON'BLE MR.JUSTICE R.JAYASIMHA BABU
AND
THE HON'BLE MR.JUSTICE M.KARPAGAVINAYAGAM

W.P.No.11234 of 2000

Union of India, rep. by the
Chief Secretary to Government,
Union Territory of Pondicherry,
Pondicherry. .. Petitioner

-Vs-

1. Central Administrative Tribunal,
(Addl. Bench), Madras, rep.
by the Registrar.

2. Adimoolam .. Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of a writ of certiorari, to call for the records on the
file of the first respondent pertaining to the order passed in O.A.No.855 of
1996 dated 3.3.1999 and quash the same and dismiss the O.A.No.855 of 1996
preferred by the second respondent herein on the file of the first respondent
with costs throughout.

!For petitioner : Mr.T.Murugesan,
Government Pleader (Pondicherry).

^For respondents: R-1 Tribunal,
Mr.V.Ajaya Kumar for R-2

:ORDER

M.KARPAGAVINAYAGAM, J.

The question involved in this writ petition is whether Adimoolam, the
second respondent herein is entitled to ask for correction of his date of
birth as 8.6.1940 instead of 12.9.1938 which was according to him wrongly
entered in his service record at the time when he had joined service.
2. The facts in brief are as follows:
Adimoolam, the second respondent herein joined the cadre of Police
Constable on 1.7.1964. At the time of joining, his date of birth was entered
in the Service Register as 12.9.1938. In the year 1979, he was issued with a

memo directing him to appear before the Office of the Inspector General of Police for appending his signature in the service register. The second respondent refused to sign in the Service Register as he found that wrong entries have been made in regard to the native place, father's name and date of birth and he sent his representation. On 5.11.1981, he was issued with another memo directing him to appear before the I.G. Office to append his signature. When he found that mistake was not rectified, he refused to sign. Again he sent a representation to the I.G. Office to rectify the mistake. There was no response. On 12.12.1991, he gave representation for rectification. On 24.2.1992, he got a reply from the I.G. Office that the alteration in the date of birth is not possible because alteration could be made only within five years from the date of entry into service. It was further directed through the memo that he could approach the Court and obtain necessary order for alteration of the date of birth. Thereafter, in the year 1996, he filed a Civil Suit before the Civil Court, Pondicherry, for a direction to correct the date of birth. Pending suit, on on 25.7.1996, he received a memo from the I.G. Office that he is attaining the age of superannuation from service on 30.9.19 96 on the basis of the date of birth entered in the Service Register. On 6.8.1996, he gave representation requesting the authorities to correct the date of birth and to allow him to continue in service till his actual superannuation. There was no reply. He withdrew the suit and filed an application in O.A.No.855 of 1996 before the Tribunal seeking for the calling of the records relating to the impugned order dated 25.7.1996 and quash the same on the ground that he had not given particulars of date of birth, etc. to the Department at the time of joining service and the Department itself had wrongly entered in the Service Register and to direct the authorities to correct the date of birth as 8.6.1940 instead of 12.9.1938 and allow him to continue in service.

3. This application was contested by the Office of the Inspector General of Police contending that the entries in the Service Register were made at the time when he joined service only on the basis of the information furnished by the applicant. Despite the memos issued directing to append his signature in the Service Register in 1979 and 198 1, he had not done the same. He never made any representation for rectification in the years 1979 and 1981. Originally, he went to the Civil Court. After withdrawal of the suit, he filed the application before the Tribunal. His claim cannot be sustained, as the request for alteration of his date of birth after five years of joining service is not permissible under law.

4. Having considered the contentions of respective parties, the Tribunal allowed the application and directed the Department to enter the date of birth of the applicant as 8.6.1940 and to give consequential reliefs as prayed for. This order dated 25.7.1996 passed by the Tribunal is challenged in this writ petition filed by the Department through the Union of India, represented by the Chief Secretary to Government, Pondicherry, before this Court.

5. Mr.T.Murugesan, learned Government Pleader, Pondicherry would submit that the order under challenge would be against the principles laid down by the Supreme Court rendered in various decisions and the Tribunal has exceeded its jurisdiction by going through some other records and on that basis, wrong finding has been given to the effect that the real date of birth is 8.6.1940. He cited several authorities in support of his submissions.

6. Mr.V.Ajaya Kumar, learned counsel appearing for the second respondent, in justification of the impugned order passed by the Tribunal, would contend that the bar of limitation and Note 6 to the Fundamental Rule 56(m) would not apply to the second respondent/applicant, as the relevant rules relating to the limitation of five years have been introduced subsequent to his entry into service and the said Rule will not have any retrospective effect and the finding by the Tribunal with reference to the wrong entries made at the time of joining service, has been given on the basis of the documentary evidence produced by the second respondent and as such, the order impugned is perfectly justified. He also would cite authorities in support of his submissions.

7. We have heard the learned counsel for the parties and perused the records and the impugned order.

8. Before going into the merits of the case, it would be worthwhile to refer to the reasonings given by the Tribunal for allowing the application filed by the second respondent.

(i) The rule of five years will not apply to the applicant, since the applicant has not asked for alteration of date of birth, but he was only asking for a correction of the mistake that had crept in, in the service register. Both in the years 1979 and 1981, the Department did not get attestation in the Service Register. Since the Department did not take any action to get the attestation in the Service Register from the applicant, despite the refusal of the applicant to attest the entries, his claim that his original date of birth is only 8.6.19 40 and not 12.9.1938, shall be considered to be genuine.

(ii) A perusal of the Service Register throws a doubt on the way it is maintained by the Department. In the Service Register, the date of birth is written in different ink when compared to other entries made therein. Therefore, the contention of the Department that the entries were made on the basis of the particulars given by the applicant at the time of joining cannot be accepted.

(iii) At the time of arguments, the Date of Birth Certificate was produced by the counsel for the applicant. That shows the correct date of birth, father's name, mother's name and native place. Therefore, the entries made in the Service Register of the applicant in the year 1964, are purely wrong entries and this might have been due to the mistake committed by the Department man who recorded the entries at the time of joining.

9. On perusal of the records including the impugned order and on going through the authorities cited by both parties, it is clear that the reasonings given by the Tribunal would suffer from perversity, not only for the reason that the same are against the legal principles laid down by the Supreme Court, but also on the reason that the findings have been given against the fact situation.

10. Let us now evaluate the relevant facts for deciding the issue involved in this case.

11. On 1.7.1964, Adimoolam, the second respondent herein joined the Police service. He was promoted as Head Constable on 27.7.1995. On his joining the Department, Service Register was opened. According to the Department, the particulars relating to age, qualification, date of birth, etc. were all obtained from him and only on the basis of the particulars given by him, entries were made in the Service Register. The entry in the

Service Register discloses that his date of birth is 12.9.1938.
12. On 2.11.1979, the Department issued a memo asking the second respondent-Constable to appear in the Office to attest his signature in the Service Register. The same was not complied with. Again on 5.11.1 981, another memo was issued for the same purpose. This time also, he failed to do so. According to the Constable, he made a representation both in the years 1979 and 1981, requesting the Department to correct his date of birth and other particulars. However, this was denied by the Department. Despite this, second respondent had not chosen to establish that the said representations that were sent, were received by the Department. However, the Department admitted that he sent a representation on 12.12.1991, requesting for correction of his date of birth and other particulars, and the same was received by the Department. For this requisition, a reply was sent on 24.2.1992 informing that the alteration of date of birth is not possible as the same could be done only within five years from the date of entry into service and if he is so advised, he could approach the court and get the order to that effect. Relevant portion in the said reply dated 24.2.1992 is this:
"With reference to his representation for change of his father' s name SGPC 585 Adimoolam is hereby informed that any alteration in the date of his birth not possible at this juncture, as such alteration is possible only within five years of entry into service.
2. If his genuine desire is to get only the name of father changed in the Service records, he may file an affidavit in the court and get a certificate regarding the change, which will be accepted."
The applicant though received the same in the year 1992, had not gone to the Court.
13. On 25.7.1996, the Department sent an intimation informing the applicant Adimoolam, Constable that he is attaining the age of superannuation on 30.9.1996 as per the service records. The following is the extract:

"It is intimated to HC 585, Adhimoulam that he is attaining the age of superannuation for retirement from service on 30.9.1996 as per service records available in this Department. In order to process pension/DCRG to him, he is directed to submit the relevant application along with enclosures to the Chief Office forthwith."

Only thereafter, he filed the suit in O.S.No.1252 of 1996 before the II Additional District Munsif, Pondicherry, seeking for a mandatory injunction directing the Department to correct his date of birth as 8.6.1940 instead of 12.9.1938. The suit was entertained. The summons were served on the Department. Strangely, on 13.8.1996, i.e. after receipt of intimation dated 25.7.1996, the second respondent, for the best reasons known to him, represented before the Civil Court through his counsel, that the matter has been settled out of Court and so suit may be dismissed as not pressed. To this effect, endorsement also has been made in Court Records and on the basis of the said representation, the suit was dismissed as not pressed on the same day.
14. Then, on the next day itself, i.e. on 14.8.1996, he rushed to the Tribunal and filed an application seeking for the relief for the quashing of the impugned order dated 25.7.1996 intimating him about the date of superannuation and praying for correction of date of birth as 8.6.1940. Even

though the second respondent had mentioned in the above application about the withdrawal of the same, he did not give the actual reason given before the Civil Court for withdrawal, but he stated that he wrongly filed the suit in the Civil Court on the wrong advice of his counsel and on coming to know that Civil Court had no jurisdiction, he withdrew the same and then filed an application before the Tribunal.

15. From the above facts, two things are clear:

(i) Even though by the order dated 24.2.1992 issued by the Superintendent of Police, Pondicherry informing him that alteration of his date of birth is not permissible under law, as five years from the date of entry into service has already elapsed and he could move before the Court and get an order, the second respondent-Constable had not chosen to approach either the Court or the Tribunal immediately.

(ii) Only in 1996, he filed the suit in O.S.No.1252 of 1996 for a direction to the Superintendent of Police, for correcting his date of birth and the same was taken on file on 27.6.1996. On 25.7.1996, an intimation was sent by the Superintendent of Police informing the applicant-Constable that he was attaining the age of superannuation on 30.9.1996 as per the service records. In the meantime, summons were served on the defendant, namely the Department. After receipt of the intimation dated 25.7.1996, he rushed to the Civil Court on 13.8.1996 and made an endorsement through his counsel praying for the dismissal of the suit as settled out of Court and on the strength of the endorsement, the suit was dismissed. Having received the intimation dated 25.7.1996 from the Superintendent of Police that he was attaining the age of superannuation on 30.9.1996, there is no reason as to why an endorsement had been made before the Civil Court that the matter has been settled out of Court and got the suit dismissed. Having made such an endorsement before the Civil Court that the matter has been settled out of Court, there is no reason as to why the applicant before the Tribunal had to falsely state in his application that the suit was withdrawn as it was found that Civil Court has no jurisdiction.

16. These two things would make it clear that the applicant has not come with clean hands either before the Civil Court or before the Tribunal.

17. Let us now come to the reasonings given by the Tribunal one by one.

18. The first finding of the Tribunal is that the five years limitation rule will not apply to the applicant as he had asked only for rectification of the mistake and not for alteration of his date of birth. On the strength of this finding, learned counsel for the second respondent would elaborate his argument contending that, that rule of five years limitation under Note 6 to Fundamental Rule 56(m) had been introduced only subsequent to the second respondent's entry into service and therefore, the Rule which is not having any retrospective effect, would not apply to the second respondent/applicant.

19. This contention by the learned counsel for the second respondent as well as the finding of the Tribunal, in our view, are untenable. According to the Department, the particulars have been entered in the Service Register relating to the applicant-Constable only on the basis of the information given by the applicant. Though the applicant would state that the particulars contained in the Service Register are wrong and those particulars were not furnished by him, the Department would emphatically deny the same. On the

other hand, it is the specific stand of the Department that the applicant never raised any objection with reference to those entries relating to date of birth, etc. at any time and that he never sent representations in the years 1 979 and 1981, requesting for correction of his date of birth, as he claimed.
20. Admittedly, the applicant has not produced any material to show that he sent such representations in the years 1979 and 1981, requesting for rectification of mistake and the same were received by the Department. Though the applicant has enclosed the copy of the alleged representation that was sent in the year 1981 in the typed set, it would not prove that he sent two representations in the years 1979 and 1981, particularly when the Department denied having received the same. But, it is to be noted that the Department would specifically admit that a representation dated 12.12.1991 was sent by the applicant to the Department, requesting for alteration of date of birth and the same was considered and rejected by its order dated 24.2.1992, which was received by the applicant-Constable.
21. As indicated above, in the said order dated 24.2.1992, the Department has specifically pointed out to the applicant that alteration of date of birth is not permissible under law after five years after entry into service and that the applicant could go to the Court and get suitable orders. Thus, the Department admitted only the representation sent on 12.12.1991 by the applicant-Constable, but did not admit any such representation earlier made. When there is such denial, the second respondent should have established that he sent the representations both in the years 1979 and 1981 and the same were received by the Department. This is not done.
22. Having entertained the representation dated 12.12.1991 and sent a reply dated 24.2.1992, there is no necessity for the Department to state that the applicant never sent any such representation earlier. As noted above, despite the receipt of ord f refusal for alteration through the endorsement dated 24.2.1992, directing him to go to Court, there is no explanation for the applicant as to why he kept quiet for five years. As indicated earlier, he went to the Civil Court only in 1996.
23. Thus, it is clear that for the first time, the second respondent made a representation seeking for correction of his date of birth only on 12.12.1991, i.e. after a lapse of five years of his date of entry into service which was on 1.7.1964. The second respondent himself would admit that he received the memo dated 2.11.1979 sent by the Department asking him to appear in the Office to attest his signature in the Service Register. Atleast from this date, within five years, he could have approached appropriate forum for rectification of the mistake, which was not done. It is not disputed by the second respondent that he received another memo dated 5.11.1981 sent by the Department asking him to attest his signature in the Service Register. Atleast from this date, within five years, he could have approached appropriate forum for rectification of the date of birth. This was also not done.
24. In this context, it would be appropriate to refer to the relevant Rule governing the correction of date of birth in the Service Records with reference to the procedure to be adopted for correction or amendment of date of birth. Note-6 to Fundamental Rule 56(m) in Chapter IX dealing with "Retirement" is as follows:

"Note 6The date on which a Government servant attains the age of fifty-eight

years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the Appropriate Authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register. The date of birth so declared by the Government servant and accepted by the Appropriate Authority shall not be subject to any alteration except as specified in this note. An alteration of date of birth of a Government servant can be made, with the sanction of a Ministry or Department of the Central Government, or the Comptroller and Auditor-General in regard to persons serving in the Indian Audit and Accounts Department, or an Administrator of a Union Territory under which the Government servant is serving, if--

(a) a request in this regard is made within five years of his entry into Government service;

(b) it is clearly established that a genuine bona fide mistake has occurred; and

(c) the date of birth so altered would not make him ineligible to appear in any School or University or Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service."

25. According to the above Rule, it is obvious that there are two requirements:

(i) The request for correction of the date of birth shall be made by the Government servant within five years of his entry into service.

(ii) The date of birth may be corrected if it is established that a genuine bona-fide mistake had occurred while recording his date of birth at the time of entry into the service.

26. Strange argument has been advanced by learned counsel for the second respondent that the limitation of five years would only apply to such Government servants who joined service after 1979 when this amended Rule came into force and the said period of limitation would not apply to the Government servants who were in service for more than five years prior to 1979. When a similar argument was advanced before the Supreme Court with regard to the very same issue, the Supreme Court would turn down this argument as untenable. Relevant portion of the observations of the Supreme Court contained in 1993 (2) Services Law Reporter 42 = 1993 (24) Administrative Tribunals Cases 92 (Union of India vs. Harnam Singh) is as follows:

"12. The approach of the Tribunal does not commend to us as it tends to create an invidious discrimination, unsustainable in law, by creating two artificial classes of Government Servants between those who joined service before and after 1979. It is a too simplistic way of looking at the issue, ignoring the ground realities and the intention of the rule making authority to discourage stale claims and nonsuit such government servants who seek the alteration of their recorded date of birth belatedly and mostly on the eve of their superannuation. .... Of course, Note 5 to FR 56(m) was incorporated

only in 1979 and it provides for request to be made for correction of date of birth within five years from the date of entry into service but what is necessary to be examined is the intention of the rule making authority in providing the period of limitation for seeking the correction of the date of birth of the Government Servant viz. to discourage stale claims and belated applications for alteration of date of birth recorded in the service book at the time of initial entry. It is the duty of the courts and tribunals to promote that intention by an intelligible and harmonious interpretation of the rule rather than choke its operation. The interpretation has to be the one which advances the intention and not the one which frustrates it. It could not be the intention of the rule making authority to give unlimited time to seek correction of date of birth, after 1979, to those government servant who had joined the service prior to 1979 but restrict it to the five year period for those who enter service after 1979. .... It would be appropriate and in tune with harmonious construction of the provision to hold that in the case of those government servants who were already in service before 1979, for a period of more than five years, and who intended to have their date of birth corrected after 1979, may seek the correction of date of birth within a reasonable time after 1979 but in any event not later than five years after the coming into force of the amendment in 1979. This view would be in consonance with the intention of the rule making authority."

The above observations by the Supreme Court would give a clear answer to the submissions made by learned counsel for the second respondent.
27. As pointed out by the Apex Court, if such an interpretation, namely the Rule would not apply to the Government servants who joined prior to 1979, is accepted, then the said interpretation would amount to frustrating the intention of the rule making authority to give unlimited time to seek correction of date of birth even long years after 1979, to the Government servants who joined service prior to 1979. Such an invidious discrimination between the Government servants who joined service prior to 1979 and after 1979, would, in our view, make the Rule mockery. The Supreme Court would specifically lay down by giving a concession while interpreting the Rule that the Government servants who joined prior to 1979, atleast could request for correction of the date of birth within than five years from 1979 in which year the amendment came into force. 28. In this case, the second respondent joined service in the year 1964. Admittedly, at the time of joining, the date of birth has been entered in the Service Register as 12.9.1938. It is not disputed that the Service Register is accessible at all times to the second respondent. From 1964 to 1979, he had not made any effort either by making a representation to the higher authority or to the appropriate forum to seek for the correction of date of birth. Even according to the second respondent, he received the memo dated 2.11.1979 asking to attest his signature in the Service Register containing the date of birth and other particulars. As pointed out above, again on 5.11.1981, another memo was issued to the second respondent for the same purpose. Receipt of these memos dated 2.11.1979 and 5.11.1981 from the Department has not been disputed by the second respondent. Entry into the Service Register was made on 1.7.1964, containing the particulars about his date of birth, etc. The period of limitation of five years as contained in the amendment to the Rule was not there in force till 1979. Of course, in the absence of the existence of the Rule relating to the

period of limitation within which the applicant has to seek for alteration of his date of birth, failure to seek for alteration cannot be found fault with and the same may be condoned. But as pointed out by the Supreme Court in Harnam Singh's case, the amendment to the Rule came into force in 1979 and the period of limitation of five years as contained therein would commence from 1979. As a matter of fact, as stated earlier, the second respondent received memos both in the years 1979 and 1981 asking him to attest his signature in the Service Register. According to the applicant, he refused to sign in the Service Register since he found that the particulars relating to his date of birth, etc. were wrongly recorded. When such is the stand taken by the applicant, he should have approached proper forum for the correction of date of birth within five years either from 1979 or from 1981, in which periods he refused to attest the Service Register relating to the particulars contained therein. There is nothing to indicate that he approached the authorities within the period of limitation.

29. Note-6(b) to F.R.56(m) says that the applicant shall clearly establish that a genuine bona-fide mistake has occurred while the date of birth was entered in the Service Register at the time of his joining service. As contained in Note 6(b) to F.R.56(m), it was not established that a genuine bona-fide mistake has occurred at the time of making entries in the Service Register on the date of joining the service. The Tribunal strangely would presume that the claim of the second respondent regarding his date of birth as 8.6.1940 must be genuine, in the light of the fact that the Department did not take any action or did not take appropriate steps to get the attestation of the second respondent's signature in the Service Register when he refused to put his signature in the Service Register after receipt of the memo sent by the Department. We are afraid to accept such a preposterous presumption, which is not permissible under law.

30. According to the Department, the two memos were sent by the Department both in the years 1979 and 1981 asking the second respondent to come and attest the Service Register. Of course, it is true that the Department has not given any details as to what steps they had taken to get the attestation of the second respondent. As pointed out by learned counsel for the second respondent that Supplementary Rule in S.R.202 in Chapter III dealing with "Record of Service" and Rule 6 in Chapter 60 dealing with "Service Book" relating to "Establishment and Administration", would indicate that it shall be the duty of every Head of Office to initiate action to show the Service Book to the Government servant concerned every year and to obtain their signature therein in token of their having inspected the Service Book and the Government servants shall inter-alia ensure before affixing their signature that their services have been duly verified and certified as such. Admittedly, the signature of the second respondent has not been obtained. But could we say that mere failure to take further steps would straightaway give out a ground to hold that the belated claim made by the second respondent that his date of birth is 8.6.1940 and not 12.9.1938, must be a genuine one? Could the Tribunal be permitted to hold that it was a mistake committed by the Department man while recording the Service Register relating to the second respondent and as such, it was not a claim for alteration of date of birth, but it is only a claim for correction of the mistake committed by the Department man? To the above questions, our answer would be emphatic "No".

31. It is the consistent stand of the Department that the entry

relating to the second respondent's date of birth was made in the Service Register at the time of his joining service only on the basis of the particulars given by the second respondent. When such is the plea made by the Department, is it not the duty for the second respondent to prove that those particulars were not given by him and by mistake, wrong entries were made? As indicated above, such a claim has not at all been made by the second respondent either before 1979 or atleast thereafter. For the first time, the second respondent made such a claim through his representation only on 12.12.1991, i.e. after 13 years, which representation was also rejected by the Department by order dated 24.2.1992. Even thereafter, he was keeping quiet. Only after four years, i.e. in 1996, he rushed to the Civil Court and filed a suit. Then some months later, he withdrew the same and filed an application before the Tribunal in the year 1996. In this context, it would be worthwhile to quote the observations made by the Supreme Court in paragraph 7 in Harnam Singh's case (cited supra):

7. ... A Government servant who has declared his age at the initial stage of the employment, is of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. .... "

32. In view of the above legal and fact situation, we are constrained to hold that the applicant before the Tribunal, namely the second respondent herein approached the Tribunal not only with unreasonable delay, but also with unclean hands. Hence, it has to be held that the first ground of reasonings given by the Tribunal would fall to ground as unsustainable in law and on facts.

33. Let us now come to the second reasoning given by the Tribunal. According to the Tribunal, the date of birth was entered in the Service Register by Department man and due to his mistake, wrong entries have been made. It is the finding of the Tribunal that the date of birth entered in the Service Register on the date of joining is written in a different ink compared to the other entries made therein. It would be appropriate to quote those actual words by the Tribunal, which reads that, "A perusal of the service register clearly throws a doubt on the way in which it is maintained by the respondents. In the service register the date of birth is written in different ink when compared to other entries made therein." As such, according to the Tribunal, those particulars would not have been given by the applicant. This finding and reasoning, in our view, would reflect the monstrosity to the core, as our perusal of the original Service Register of the second respondent would clearly show that the said finding is factually wrong.

34. The Service Register which was opened on 1.7.1964, was signed by the Officer on behalf of the Inspector General of Police, Pondicherry, on 13.7.1965. It contained a date of birth as 12.9.1938. Though there is some over-writing on the date of birth, it cannot be said that it was in a different ink. In the same Register, further pages would indicate that the second respondent, namely Adimoolam himself has given details of his family as

on 20.11.1990 in Form-3, which was counter-signed by the Superintendent of Police, Pondicherry. In that Form-3, the name of the second respondent has been given as "Adimoolam"; the date of birth has been given as "12.9.1938" and date of appointment has been given as "1.7.1964". The second respondent has given details of his wife's name, the names of his three sons and two daughters. This was signed by the second respondent. Therefore, the finding given by the Tribunal that at the time of joining the service, the entry was made wrongly by the Department man without getting any particulars from the second respondent, is clearly wrong.

35. Now, let us come to the third reasoning of the Tribunal.

According to the Tribunal, the Birth Certificate was produced by the counsel for the applicant at the time of arguments and that Certificate is obtained from the Pondicherry Municipality which is in French, with English translation of the same in Sl.No.177 referring to the name of father, mother and the native place. In that Certificate, the date of birth of the applicant is mentioned as "8.6.1940" and therefore, according to the Tribunal, the entries relating to the date of birth which was entered at the time of joining, must be held to be wrong entries. This finding as well in our view, is illegal, in view of the fact that the Tribunal rushed to come to such a conclusion on the basis of the defence document produced belatedly, that too at the time of arguments advanced before the Tribunal.

36. The date of retirement under F.R.56(m) must be determined on the basis of the Service Register and not on what the applicant claimed to be his date of birth, unless the Service Register is first corrected consistent with appropriate procedure prescribed thereunder.

37. It is settled law that unless a clear case on the basis of materials which could be held to be conclusive in nature, is made out by the applicant, and that too, within a reasonable time as provided in the rules governing the service, the Court or Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, the Court or Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of the date of birth has been made in accordance with the procedure prescribed and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within atleast a reasonable time. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof in relation to his date of birth. Whenever any such question arises, the onus is on the applicant to prove about the wrong recording of his date of birth, in his Service Book. When the entry was made in the Service Record and when the employee was in service, he did not make any attempt to have the Servi ce Record corrected in time, any amount of evidence produced subsequently is of no consequence. These principles have been laid down by the Supreme Court in the following cases: (i)1994 Supp(1) SCC 155 = JT (1993) 5 S.C. 404 (Secy. and Commr., Home Deptt. vs. R.Kirubakaran), (ii) 1994 (6) SCC 302 (State of Tamil Nadu vs. T.V.Venugopalan), (iii) 1997 (5) SCC 181 (State of Orissa vs. Ramanath Patnaik) and (iv) 2003 (6) SCC 483 (State of U.P. vs. Gulaichi).

38. If these principles are applied to the present facts of the case, then we have no other alternative except to hold that the second respondent's

claim for correction of date of birth has not been made in accordance with the procedure and within time fixed by the relevant Rules. As a matter of fact, the second respondent has made a stale and belated claim before the Tribunal on the basis of the Birth Certificate produced before it, that too at the time of advancing arguments.

39. Time and again, it is held by the Supreme Court that whenever a question relating to the correction of date of birth arises, the applicant has to produce his evidence in support of such claim without any delay, and such evidence should amount to irrefutable proof relating to his date of birth and it is the onus on the applicant to prove about the wrong recording of his date of birth in the Service Register. These clear-cut observations were made by the Supreme Court in the case of State of U.P. vs. Gulaichi (2003 (6) SCC 483) (cited supra), since it was felt that in many cases, it is a part of the strategy on the part of such public servant to approach the Court or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their date of birth in the Service Book. The Court or Tribunal must therefore be slow in granting the relief or continuation in service, unless prima-facie evidence of unimpeachable character is produced.

40. We should bear in mind that the guidelines given by the Supreme Court that the direction for correction of the date of birth of the public servant concerned would cause a chain reaction inasmuch as others waiting for years below him for that respective promotion are affected in this process. Some are likely to suffer irreparable injury because of the correction of date of birth and the Officer concerned continues in Office for years together within which time many Officers who are below him in seniority waiting for the promotion, may lose promotion for ever. In that context, the Supreme Court in 2003 (6) SCC 483 (cited supra) would observe in paragraph 9 that, " ... As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the Court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible ... ".

41. Therefore, the Tribunal's finding on the basis of the Birth Certificate and placing reliance on the same which has been belatedly produced before it, that the entry relating to date of birth at the time of joining in the service is wrong and the claim of the applicant relating to the correction of date of birth must be genuine, is wrong inasmuch as the same would be against the principles of law laid down by the Apex Court as referred to above.

42. In a similar case reported in 2001 (4) SCC 52 (Hindustan Lever Ltd. vs. S.M.Jadhav), when a document was produced before the High Court at the time of arguments, on the basis of which the High Court accepted the claim of the applicant, the Supreme Court set aside the said finding on the ground that no reliance could be placed on the document, since it was produced for the first time before the High Court. Relevant observations of the Supreme Court in that case are as follows:

"9. ... It is settled law that at the fag end of career, a party cannot be allowed to raise a dispute regarding his date of birth. The case of the 1st respondent that he had intimated the Company in 1953 itself is not believable. .... It is impossible to believe that for all these years the

1st respondent was not aware of the date of birth in his service record or the Provident Fund Booklet. It is impossible to believe that he has not read a single Annual Report in all these years. If, as claimed by him, he had informed the Company in 1 953, he would surely have made some enquiry whether the service record was corrected. .....

10. No reliance can be placed on the letter dated 15.5.1953. This is produced for the first time in the High Court. ...

11. In our view, the impugned order cannot be sustained at all. The 1st respondent cannot be allowed to raise such a dispute at the fag end of his career. ...."

The above observations of the Supreme Court would in all fours, apply to the facts of the present case.

43. In this case also, the document on which reliance was placed by the Tribunal, has never been produced either before the authority concerned or before the forum concerned even at the earlier stage. As noted above, the Service Register was accessible to the applicant at all times. When he came to know that his real date of birth has not been entered into his Service Register, he must have produced the documents before the superior officers requesting for correction of the date of birth, which document he placed reliance before the Tribunal. This could have been done if not earlier, atleast at the time when he received the memos dated 2.11.1979 and 5.11.1981. Therefore, the Tribunal ought not to have placed reliance on the belated document, especially when the Department had no occasion to go through the same and find out it's genuineness.

44. For the reasons stated above, the impugned order is liable to be set aside and accordingly, the same is set aside. The writ petition is allowed. No costs.

Index: Yes
Internet: Yes

cs/mam

To
1.Union of India, rep. by the
Chief Secretary to Government,
Union Territory of Pondicherry,
Pondicherry.

2. Central Administrative Tribunal,
(Addl. Bench), Madras, rep.
by the Registrar.